



POLICE DEPARTMENT

October 21, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Luis Robles
Tax Registry No. 927431
24 Precinct
Disciplinary Case No. 2013-10026

The above-named member of the Department appeared before me on June 22 and September 16, 2015 charged with the following:

1. Said Police Officer Luis Robles, assigned to the 24th Precinct, while on duty, on or about April 14, 2013, having been directed by New York City Police Lieutenant Roger Lurch to cease speaking loud and being disrespectful, did fail to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 - COMPLIANCE WITH ORDERS

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Jose Ramos, Sergeant Peter Stasinski, Lieutenant Roger Lurch as witnesses.

Respondent's Case

Respondent testified on his own behalf.

EVIDENCE

On April 14, 2013, Respondent was assigned to work the first platoon in the 24 precinct. Lieutenant Lurch was Respondent's platoon commander at the time. The issue in this case concerns what took place at the precinct during an encounter between Respondent and Lieutenant Lurch.

By way of background information, prior to their encounter at the precinct, Respondent had responded to two incidents occurring in the 24 Precinct. In the first incident Respondent was involved in a foot pursuit of a suspect who turned out to be armed with a simulated gun. Respondent apprehended the suspect and subsequently also recovered the gun. In the second incident Respondent obtained information concerning a stabbing and wanted to do a show-up identification procedure. Lieutenant Lurch decided not to do a show-up and directed everyone to return to the precinct.

At the time Respondent encountered Lieutenant Lurch at the precinct that evening, he was upset that Lurch did not allow him to conduct a show-up. Lurch felt that Respondent had not properly kept him informed of his actions in the field.

There is evidence from four people as to what transpired between Lieutenant Lurch and Respondent inside the precinct. Sergeant Ramos, the first platoon patrol supervisor at the 24 Precinct on April 14, 2013, was assigned as the desk officer that evening. He testified that Lieutenant Lurch was behind the desk when Respondent approached and began speaking to Lurch in a "loud, aggressive manner." (Tr. 9). He further testified that Lurch calmly ordered Respondent multiple times to stand down, stop talking and to back away from the desk. Respondent did not comply with those orders until after the third or fourth time Lurch repeated them. (Tr. 9-10). Ramos did not remember Respondent's exact words but he recalled that Respondent challenged Lurch because he thought he did his job incorrectly. (Tr. 19). He stated that Respondent never cursed. (Tr. 13). After the exchange, Lurch ordered Ramos to contact the duty captain, which he did.

Lieutenant Lurch also testified. Lurch testified that while he was behind the desk, and while prisoners and other members of the service were within earshot, Respondent used a disrespectful tone to address him. (Tr. 25). He further testified that Respondent was verbally challenging his supervisory actions saying a show-up should have been done at the scene. (Tr. 23-26). Lurch stated that he told Respondent more than once to cease talking and that Respondent did not comply with those directives. (Tr. 26).

We also have hearsay evidence from a PAA in the form of a transcript from her Department interview which was conducted on May 14, 2014. PAA Brown stated that on April 14, 2013, she was working a 2330 by 0730 tour at the 24 Precinct and was assigned to the 124 room. She heard loud talking and then went to the front desk area. According to Brown, she saw Respondent cursing and described his demeanor as "upset." (Dep't Ex.

1, 12). She described Lurch as also being "upset," but added that he did not raise his voice. (Dep't Ex. 1, 9, 13). PAA Brown stated that Respondent was saying to Lurch, words to the effect of, "Let me do my f-ing job." (Dep't Ex. 1, 7, 13). When asked if it was a discourteous tone, she initially said no and but then clarified that it was discourtesy. (Dep't Ex. 1, 14-15).

Respondent testified that at the precinct, he was talking to Lurch in a voice louder than he used in court, but wasn't screaming or cursing at Lurch. (Tr. 87). He further testified that all he did was ask Lurch what he should do with the two prisoners who had not been identified by a show-up. (Tr. 115). He testified that when he asked this question Lurch told him in sum and substance to shut-up. (Tr. 111). Respondent stated that he repeated the question after Lurch had told him to stop talking. (Tr. 112). Respondent acknowledged he was upset at the time because he had two prisoners who committed attempted murder, and possibly murder, since the victim was likely to die, and they could not hold them because a show-up had not been conducted. (Tr. 87).

ANALYSIS

While much of the trial was spent discussing what had transpired out on the streets the night of April 14, 2013, the only question to be decided here is whether the Department proved by a preponderance of the credible evidence that Lieutenant Lurch directed Respondent to cease speaking loudly and being disrespectful and whether Respondent failed to comply with that order. I find that based on the testimony given at the hearing from Ramos and Lurch, and supported by the hearsay statement of PAA

Brown, Respondent did address Lurch in a loud tone, was disrespectful to Lurch and failed to comply with a lawful order to cease.

I had the opportunity to observe Lurch and Ramos at trial and I find, based on their demeanor and their answers on both direct and cross, that they were credible witnesses. Lurch presented as a very calm and deliberate person and his in-court demeanor comports with the descriptions given of him at the time of the incident by both Ramos and Brown. Respondent's behavior as described by both Lurch and Ramos indicates that he was loud and verbally aggressive towards Lurch and that he failed to cease talking when directed to do so by Lurch. Brown's testimony, as hearsay, is given somewhat less weight in that she was not available for cross-examination. There is nothing in her statement which is exculpatory, but rather it serves to further support the testimony of Lurch and Ramos.

In addition, it is clear that Respondent thought that Lurch had not made correct decisions in the field and was by his own admission upset in that he thought those decisions resulted in "potential murderers" getting away. With this admitted mindset, it is likely that Respondent spoke to Lurch in the loud and aggressive manner described by the three other witnesses and is unlikely that he only asked a question about what to do with the prisoners.

Even assuming, merely for argument's sake, that the Respondent was correct in thinking that a superior officer had erroneously failed to conduct a show-up, it did not give Respondent the right to loudly and aggressively confront a superior officer in that manner or to ignore the directive of Lurch, his supervisor, to cease addressing him in that manner.

Respondent therefore is Guilty of the Specification.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on September 29, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of failing to comply with a lieutenant's order to cease speaking loud and being disrespectful to him. Respondent's actions were inappropriate within the structure of a paramilitary organization. Members of the service must always address ranking officers with respect and courtesy. A paramilitary organization cannot function effectively if officers challenge supervisors and disobey direct orders. For this misconduct, the Assistant Department Advocate recommended a penalty of 20 vacation days. This recommendation is consistent with prior cases. See *Disciplinary Case Nos. 2009-8534 & 2010-86387* (Jun. 27, 2012), in which a fourteen-year police officer with no prior disciplinary record forfeited 20 vacation days for speaking sarcastically to a sergeant after being asked to conduct a warrant check; *Disciplinary Case No. 2011-4134* (Jul. 23, 2012), in which an 8-year police officer with no prior disciplinary record forfeited 20 vacation days for being discourteous to the desk officer; *Disciplinary Case No. 2011-3967* (Sep. 10, 2012), in which a thirteen-year police officer with no prior disciplinary record forfeited 20 vacation days for being discourteous and yelling after being ordered by a lieutenant to effect an arrest.

Based on the foregoing, it is recommended that Respondent forfeit 20 vacation days.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner – Trials

APPROVED



FEB 17 2016
WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER LUIS ROBLES
TAX REGISTRY NO. 927431
DISCIPLINARY CASE NO. 2013-10026

In 2014, Respondent received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. He was rated 3.5 “Highly Competent/Competent” in 2012 and 3.0 “Competent” in 2013. He has been awarded five medals for Excellent Police Duty, five for Meritorious Police Duty, and one Commendation. [REDACTED]

[REDACTED]
[REDACTED] Respondent
has no prior formal disciplinary record.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner – Trials